

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

NO. 50

POWELL VALLEY ELECTRIC COOPERATIVE,
Petitioner,

vs.

KENTUCKY UTILITIES COMPANY,
Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

BRIEF FOR POWELL VALLEY ELECTRIC
COOPERATIVE

CLYDE Y. CRIDLIN,
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OPINIONS BELOW

The majority and dissenting opinions in the court of appeals are reported at 375 F.2d 403. The opinion of the district court is reported at 237 F. Supp. 502.

JURISDICTION

The judgment of the court of appeals was entered on November 15, 1966. The petition of the Powell Valley Electric Cooperative for a writ of certiorari was filed

on February 13, 1967, and was granted on March 27, 1967 (386 U.S. 980; R. 749). The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Does section 15d(a) of the Tennessee Valley Authority Act (16 U.S.C. § 831n-4(a)) insulate a private utility from the competition of two small municipalities using TVA power supplied to them by a rural electric cooperative which on July 1, 1957, had lines completely surrounding and penetrating into the towns and supplied TVA power on all sides of the towns and within the towns themselves?

2. Where the TVA Board of Directors has construed section 15d(a) of the TVA Act as not prohibiting the sale of TVA generated power in competition with private utilities within such towns, does such construction represent a reasonable exercise of the Board's executive responsibilities which is not subject to judicial reversal?

3. Where the TVA Board has determined that two small towns are inside the periphery of the area for which TVA or its distributors were the primary source of power supply on July 1, 1957, and such determination was made in good faith and supported by substantial evidence, may such determination be overturned by the courts?

STATUTE INVOLVED

The principal statutory provision involved is section 15d(a) of the TVA Act, which is printed in the appendix to the brief for the Tennessee Valley Authority.

STATEMENT AND ARGUMENT

Petitioner adopts the STATEMENT and ARGUMENT set forth in the briefs of petitioners *Hardin, Mayor of Tazewell, et al. v. Kentucky Utilities Co.*, No. 40, and *Tennessee Valley Authority v. Kentucky Utilities Co.*, No. 51.

Respectfully submitted,

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October 3, 1967.